payment was not made for production of income. Section 39(1)(g) reads:

"39. (1) Subject to any express provision of this Act, in ascertaining the adjusted income of any person from any source for the basis period for a year of assessment no deduction from the gross income from that source for that period shall be allowed in respect of —

....

(g) any sum, by whatever name called, payable (otherwise than to a State Government) or with the approval of the Minister, a statutory authority, or other body the capital or fund of which is wholly or substantially owned by a State Government or a statutory authority for the use of a licence or permit to extract timber from a forest in Malaysia;"

The effect of section 39(1)(g) was considered in the case of *Director-General of Inland Revenue* v. *Lahad Datu Timber Sdn. Bhd.*[12] where it is shown that sums paid for the use of the licence or permit to extract timber within the meaning of section 39(1)(g) should not be allowed as deductions. Reference was made to *Director-General of Inland Revenue* v. *L.T.S.*[13] where it is held that this section is to be construed to mean that sums paid by the taxpayer to permit holders is caught by subsection (1)(g) of section 39 and is therefore not deductable.

See also the case of *Lahad Datu Timber Sendirian Berhad* v. *The Director-General of Inland Revenue*[14] where Lord Russell of Killowen delivering the judgment of the Board had this to say at page 6:

"The second question is whether the three items disallowed as deductions by the Special Commissioners come within section 39(1)(g) of the Act 53. They have already been described. They appear to their Lordships to fall squarely within the description of sums payable for the use of a licence or permit to extract timber, within that statutory provision."

Our view of the present case is that the appellant cannot successfully argue that such sum was not payment for the use of a licence or permit to extract timber within the meaning of section 39(1)(g) of the Income Tax Act, 1967.

For these reasons, we dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Skrine & Co.*

BALAKRISHNAN v. KETUA PENGARAH PERKHIDMATAN AWAM MALAYSIA AND THE GOVERNMENT OF MALAYSIA

[F.C. (Raja Azlan Shah Ag. L.P., Abdul Hamid F.J. & Abdoolcader J.) May 27 & July 21, 1981]

[Kuala Lumpur — Federal Court Civil Appeal No. 234 of 1980]

Administrative Law — Declaration — Termination of service in public interest — Application to declare such termination void and inoperative — Public officer called upon to give explanation under General Order 8 — Action subsequently taken to terminate his services in public interest under General Order 44 — Action taken by Government — General Orders 8, 27, 30 & 44 — Pensions Ordinance, 1951, s. 10(d) — Federal Constitution, art. 144(5B).

Constitutional Law — Public Services — Disciplinary Authority — Disciplinary Board appointed — Public Service Commission cannot exercise powers entrusted to Disciplinary Boards — Power of Yang di Pertuan Agong — Exercised by the Government — General Orders 8, 27, 30 & 44 — Public Services Disciplinary Board Regulations, 1967 — Pensions Ordinance, 1951, s. 10(d) — Federal Constitution, art. 144(5B).

In this case the appellant had been charged with attempted corruption but was acquitted. Subsequently the Public Services Commission wrote to the appellant stating that from a report from the Director-General of Road Transport he appeared to be in control of pecuniary resources and property disproportionate to his official emoluments and known private means and requiring him to submit an explanation. The appellant submitted his explanation and was told that the explanation had been considered. Subsequently the first respondent, the Director of Public Services, informed the appellant that the Government had decided to terminate his service in the public interest under section 10(d) of the Pension Ordinance and G.O. 44. The appellant brought an action for a declaration that the termination of his service in the public interest was void, inoperative and of no effect. The action was dismissed in the High Court and the appellant appealed.

Held: (1) in this case the Disciplinary Authority was the Public Services Disciplinary Board and by virtue of the explicit provisions of Article 144(5B)(iv) of the Constitution the Public Service Commission was precluded from acting as it purported to do under G.O. 8;

(2) G.O. 44 goes beyond and is additional to what precedes it and recourse to its provisions is not *per se* an act of caprice or bad faith;

(3) G.O. 44 does not make the calling of a report from the head of department mandatory and imperative but only directory and discretionary and in any event in this case there was a report from the Director-General of Inland Transport;

(4) it was for the Government to determine the question of public interest and on the evidence disclosed in this case there was sufficient material for the Government's decision on the question of public interest and it had not been established that it was made without justification or evinced any lack of good faith;

(5) the termination of the appellant's services was properly effected under G.O. 44 in the public interest and it was not a convoluted process to disguise a dismissal and there was no abuse of power or *mala fides* in the proceedings;

(6) the reference to the Government in the letter of the Director of Public Services is sufficiently comprehensive to manifest the Yang di-Pertuan Agong's participation in the decision made. It is not correct therefore to argue that the Yang di-Pertuan Agong did not in fact require the appellant to retire from the public service on the termination of his employment in the public interest under section 10(d) of the Pensions Ordinance.

Cases referred to:-

(1) *Westminister Bank Ltd.* v. *Minister of Housing and Local Government* [1971] A.C. 508.

(2) *Yeap Hock Seng alias Ah Seng* v. *Minister for Home Affairs, Malaysia & Ors.* [1975] 2 M.L.J. 279.

(3) *Najar Singh* v. *Government of Malaysia & Anor.* [1976] 1 M.L.J. 203.

(4) *Sidney Godfrey De Zoysa* v. *Public Service Commission & Ors.* [1963] 1 W.L.R. 262.
(5) *Government of Malaysia* v. *Lionel* [1974] 1 M.L.J. 3.
(6) *Asher & Ors.* v. *Secretary of State for the Environment & Anor.* [1974] Ch. 208.
(7) *Teh Cheng Poh alias Char Mar* v. *Public Prosecutor* [1979] 1 M.L.J. 50; [1980] A.C. 458, 466, 473.
(8) *Town Investments Ltd. & Ors.* v. *Department of the Environment* [1978] A.C. 359, 397.
(9) *In re Golden Chemical Products Ltd.* [1976] Ch. 300, 307.
(10) *Carltona Ltd.* v. *Commissioner of Works & Ors.* [1943] 2 All E.R. 560, 563.
(11) *Lim Lian Geok* v. *Minister of Interior, Federation of Malaya* [1964] M.L.J. 158.

FEDERAL COURT.

M. Sivalingam for the appellant.

Lim Beng Choon (Senior Federal Counsel) for the respondents.

Cur. Adv. Vult.

Abdoolcader J.: This appeal by the appellant who was an Enforcement Officer in the Road Transport Department is against the dismissal by Vohrah J., on September 27, 1980 of his claim for a declaration, as the core of the relief he seeks, that the termination of his service in the public interest under section 10(d) of the Pensions Ordinance, 1951 and General Order 44 of the General Orders contained in the Public Officers (Conduct and Discipline) (General Orders, Chapter D) Regulations, 1969 set out in the Schedule to the Essential (General Orders, Chapter D) Regulations, 1969 was void, inoperative and of no effect. To obviate prolixity, all references in this judgment to General Orders allude to the General Orders (abbreviated as 'GO' in relation to both singular and plural according to the context) enacted in the 1969 Regulations which have since been repealed with effect from July 17, 1980 except for GO 44 which is deemed to have been repealed on December 30, 1978 and replaced by the Public Officers (Conduct and Discipline) (Chapter "D") General Orders, 1980 but which do not however affect these proceedings.

The appellant was appointed as an Enforcement Officer on probation on April 17, 1961 and placed on the pensionable establishment on April 17, 1964. He was posted for duty in several States and on April 16, 1969 he was appointed Acting Registrar and Inspector of Motor Vehicles with an acting allowance and transferred to Johore as such on April 21, 1969. He was interdicted from duty on April 30, 1969 consequent to his arrest on a charge of attempted corruption but was acquitted on July 30, 1970. He resumed duty on August 22, 1970 as an Enforcement Officer and was not reinstated as Acting Registrar and Inspector of Motor Vehicles but he has now abandoned the contention raised in the court below as to alleged reduction in rank in this respect.

The Public Services Commission wrote to the appellant on May 22, 1971 stating that from a report from the Director General of Road Transport he appeared to be in control of pecuniary resources and property disproportionate to his official emoluments and known private means, and that the Disciplinary Authority had considered the report and had decided to take disciplinary action against him under GO 8 and requiring him to submit an explanation within 14 days. The appellant submitted his explanation as required by a letter dated June 19, 1971 followed by another letter on August 1, 1971, and he was informed by the Secretary to the Public Services Commission by a letter dated August 13, 1971 that his explanation had been considered on July 19, 1971 by the Public Services Commission which had recommended to the Government, the 2nd respondent, the action which ought to be taken against him and that he would be informed by the Director General of Public Services, the 1st respondent (in the Malay rendition), of the decision made in this respect.

The 1st respondent then informed the appellant in a letter dated October 13, 1971 that in exercise of the powers conferred by the Pensions Ordinance the 2nd respondent had decided to terminate his service in the public interest under section 10(d) of the Ordinance and GO 44 and that the termination would be effective as soon as he had taken all the leave he was entitled to and that the question of his eligibility to receive a pension would be dealt with by the 2nd respondent in accordance with the Ordinance. The appellant put in written appeals against the termination of his service to the Registrar and Inspector of Motor Vehicles, Johore, the 1st respondent, the Secretary to the Public Services Commission and other officials, but he was informed that the Public Services Commission had no authority to consider any appeal against a decision under the Pensions Ordinance and the GO. The appellant's record of service discloses that he retired from the public service on December 8, 1971.

The gist of the appellant's complaint is that the termination of his service was penal in character and effect and amounted to a dismissal and was in breach of the rules of natural justice in that the contents of the report against him were not disclosed to him and he was not given a fair opportunity to controvert any adverse allegations made, his retirement from the public service was not effected by the Yang di-Pertuan Agong as it should have been under section 10(d) of the Pensions Ordinance but by the 2nd respondent and that the exercise of the power to terminate his service in the public interest under GO 44 after the initial application of GO 8 without recourse to the procedure stipulated in GO 30 as required by GO 8(2) was an abuse of power and made in bad faith.

The appeal is presented before us only on two grounds in a composite contention that can be neatly summarised as an allegation of malice in blunderland, scilicet (1) that as action was initiated under GO 8, then the procedure under GO 27 and 30 should apply and have been observed and the failure to do so has resulted in denying the appellant natural justice by compliance with the requisite procedure laid down in GO 30 and that in the circumstances GO 44 could not apply or be resorted to, and the purported termination thereunder was accordingly an exercise of bad faith and an abuse of power; and (2) that the requirement for the appellant to retire from the public service on the termination of his employment in the public interest under section 10(d) of the Pensions Ordinance could only be exercised by the Yang di-Pertuan Agong as required thereby and not by the 2nd respondent as intimated by the 1st respondent and that this accordingly vitiated the exercise of the power under that statutory provision.

In view of the constant reference that will be made thereto, it would perhaps be convenient and appropriate to set out the provisions of GO 8 and 44 which lay down:

"8. (1) Where the Disciplinary Authority is of the opinion that an officer is or appears to be —

(i) maintaining a standard of living which is not commensurate with the official emoluments and any known private means, if any; or

(ii) in control of or in possession of pecuniary resources or property, movable or immovable, which are disproportionate to his official emoluments and his known private means or which could not reasonably be expected to have been acquired by the officer with his official emoluments and any known private means, the Disciplinary Authority may call upon the officer to explain how he is able to maintain the said standard of living or how he came by his pecuniary resources or property.

(2) If, when called upon, the officer fails to give any explanation or gives an explanation which does not satisfy the Disciplinary Authority, the Disciplinary Authority may thereupon take disciplinary action with a view to dismissal in accordance with General Order 30 or take such steps as the Disciplinary Authority may deem fit.

44. (1) Notwithstanding these General Orders, where it is represented to or is found by the Government that it is desirable that any officer should be required to retire from the public service in the public interest or on grounds which cannot suitably be dealt with by the procedure laid down in these General Orders, the Government may call for a full report from the Head of Department in which the officer is serving. The said report shall contain particulars relating to the work and conduct of the officer and the comments, if any, of the Head of Department.

(2) Where the Government considers that it requires further clarification, it may cause to be communicated to the officer the complaints by reason of which the termination of his service is contemplated.

(3) If after considering the report or (in the case of the Government having communicated to the officer as in paragraph (2)) after giving the officer an opportunity of submitting a reply to the complaints the Government is satisfied that having regard to the conditions of the services, the usefulness of the officer thereto, the work and conduct of the officer and all the other circumstances of the case, it is desirable in the public interest so to do, the Government may terminate the service of the officer with effect from such date as the Government shall specify.

(4) Where the Disciplinary Authority has recommended to the Government that an officer should be required to retire from the public service in the public interest, the Government may so terminate the service of the said officer.

(5) In every case of such termination of service of an officer under this General Order, the question of pension shall be dealt with in accordance with the law relating to pensions."

The appellant contends on the first ground that as recourse was had in the first place to GO 8, any disciplinary action taken with a view to dismissal must be in accordance with the procedure stipulated in GO 30 and that it was not open to the 2nd respondent to circumvent that procedure by resorting to the provisions of GO 44. The respondents' case is that GO 8 is a self-contained code empowering the Disciplinary Authority to investigate the conduct of an officer to ascertain if he is living beyond his private means or official emoluments or is in control or possession of pecuniary resources or property disproportionate to his official emoluments and known private means; it is merely a machinery provision for this purpose and it is only after receiving an explanation from the officer that the Disciplinary Authority has to decide the action to be taken in respect of which there are two alternatives under GO 8(2), either to (a) proceed to take disciplinary action with a view to dismissal under GO 30 or (b) take such steps as the Disciplinary Authority may deem fit. Before us, Mr. Lim Beng Choon, Senior Federal Counsel appearing for the respondents, changed gear from a combined first and third to the fourth, to use a graphically relative numerical paradigm from the language of the automobile, practically putting into reverse gear in the process the stand he took in the court below, and now submits that the termination of the appellant's service in the present proceedings was made under GO 44(4) and not GO 44(1) and (3) in that, relying on the letter of August 13, 1971 from the Secretary to the Public Services Commission to the appellant we have mentioned, the Disciplinary Authority acting under the second alternative open to it under GO 8(2) had recommended to the 2nd respondent that the appellant should be required to retire from the public service in the public interest and the 2nd respondent had terminated his service accordingly as provided for in paragraph (4) of GO 44.

It is clear from the documentary evidence in this case that the Public Services Commission purported to act as the Disciplinary Authority for the purposes of GO 8 and, indeed, if GO 44(4) had been resorted to, under that provision as well, and if so then the crucial question is whether the Public Services Commission was in fact the Disciplinary Authority as defined in the GO, a matter the learned judge did not find necessary to consider or decide in arriving at his decision. Article 144(5B)(i) of the Federal Constitution provides for the powers and functions of the Public Services Commission other than the power of first appointment to the permanent or pensionable establishment to be exercised by a board appointed by the Yang di-Pertuan Agong and paragraph (iv) of Article 144(5B) enacts that where such a board has been appointed the powers or functions entrusted to it shall so long as they remain exercisable by the board cease to be exercisable by the Commission. The Public Services Disciplinary Board Regulations, 1967 which came into force on July 1, 1967 (but now repealed and substituted by the Public Services Disciplinary Board Regulations, 1972 which took effect January 1, 1972) established Public Services Disciplinary Boards with jurisdiction to exercise functions in matters relating to discipline over all members of the general public service of the Federation and the joint public services mentioned in Article 133 of the Constitution but with no jurisdiction, in relation to an officer of the appellant's category in the public service, to exercise the disciplinary powers of dismissal, reduction in rank or deferment of increment.

The Disciplinary Authority referred to in GO 8 and 44(4) is defined in GO 2 to mean (so far as material for the appellant's purposes) the Public Services Commission and includes a board appointed and vested with the Commission's functions relating to disciplinary control under clause (5B) of Article 144 of the Constitution. Since the excepted functions and powers, in particular the disciplinary power of dismissal, are not involved in proceeding under GO 8(1) and 44(4), the Disciplinary Authority in this case was therefore the Public Services Disciplinary Board we have referred to and by virtue of the explicit provisions of Article 144(5B)(iv) of the Constitution the Public Services Commission was precluded from acting

as it purported to do under GO 8 or, if it did so, under GO 44(4) in relation to the appellant in this matter. It does not appear therefore that the 2nd respondent can rely on the application of GO 44(4) as Senior Federal Counsel now seeks to contend. We would *en passant* briefly observe, in deference to the argument of Mr. Sivalingam for the appellant on this aspect, that if the power of termination under GO 44(4) could and did apply had there been a recommendation thereunder by the properly constituted Disciplinary Authority, the recommendation so made would be *sui generis* in the exercise of the second alternative course available to the Disciplinary Authority under GO 8(2) of taking such steps as it may deem fit in determining the action to be taken thereunder, and is distinct from and additional with no relation to a similar recommendation under GO 30(11)(c) which only provides for such a recommendation as one of the options open to the Disciplinary Authority as an alternative to imposing disciplinary punishment after completion of the procedure laid down in GO 30, bringing it within the first course open to it under GO 8(2).

The question then arises whether, after the initiation of action under the provisions of GO 8, it was open to the 2nd respondent to exercise its powers under GO 44(1) and (3), bearing in mind moreover that the process initiated under GO 8 was effected by the wrong entity purporting to act as the Disciplinary Authority and was therefore abortive and invalid. Mr. Sivalingam says it was not and that the application of GO 44 in the circumstances was an abuse of power and an act of bad faith. We regret we cannot agree. GO 44 comes under Part IV of the GO under the heading "Miscellaneous" and opens with the significant *non obstante* clause "Notwithstanding these General Orders,...," thus making it quite separate and distinct from the preceding three Parts of the GO dealing with conduct, disciplinary procedure and general provisions pertaining to disciplinary punishments. GO 44 goes therefore beyond and is additional to what precedes it and recourse to its provisions even by way of a change in midstream, so to speak, is not *per se* an act of caprice or bad faith.

In *Westminister Bank Ltd.* v. *Minister of Housing and Local Government*[1] the House of Lords held that in a situation where the exercise of power under one Act might give compensation but under another would not, and both would achieve the same ends, it is not an excess or abuse of power to exercise that given by the second Act. In *Yeap Hock Seng alias Ah Seng* v. *Minister for Home Affairs, Malaysia & Ors.*[2] the detenu was tentatively arraigned on a charge of murder but was granted a discharge at the request of the prosecution and was then immediately apprehended as he walked out of the court and put under preventive detention which precluded any trial: it was held that the detention could not be impugned on the ground of *mala fides*. In *Najar Singh* v. *Government of Malaysia & Anor.*[3] the Privy Council held in respect of the dismissal of a police officer that even if he could have been dealt with under the Police Regulations, 1970 that would not prevent his being dealt with under the General Orders pertaining to the conduct and discipline of public officers.

In *Sidney Godfrey De Zoysa* v. *Public Service Commission & Ors.*[4] the Privy Council also held in a case pertaining to the compulsory retirement of a police officer that there was no necessary inconsistency between two different sets of regulations and rules which ran in parallel streams and that if the head of the department initiated the procedure under the regulations where he considered it to be in the public interest that an officer should be required to retire at the age of optional retirement, then the authorities should comply with the terms of the relevant regulation but that was without prejudice to the powers of the Public Service Commission under a different set of rules to require a police officer to retire at 50 as their power under the rule in question was unqualified and required no preliminary steps for the justification of an order and that rule was clear in its terms and afforded complete justification for their action and they acted within their powers in requiring the appellant in that case to retire. In *Government of Malaysia* v. *Lionel*[5] the Privy Council allowing the appeal and restoring the order of the trial judge held that the respondent in that case had not been dismissed under the General Orders applicable to his employment but that his services were validly terminated in accordance with the terms of his appointment.

We advert to the terms of GO 44(1). There is a *non obstante* clause as we have observed and that paragraph refers to representations to or a finding by the 2nd respondent that it is desirable that an officer should be required to retire from the public service in the public interest or on grounds which cannot suitably be dealt with by the procedure laid down in the GO and goes on to provide that the 2nd respondent may call for a full report from the head of department in which the officer is serving. Paragraph (2) of GO 44 was not invoked by the 2nd respondent in these proceedings and it did not have to in its discretion and we now turn to paragraph (3) thereof. Mr. Sivalingam further submits that the termination of the service of an officer in the public interest under GO 44(3) can only be made effective if in accordance with the terms of that paragraph the 2nd respondent has considered the report, which clearly refers to a report that may be called for by the 2nd respondent under paragraph (1) of that GO. He says that there is no evidence of any such report having been called for for the purposes of paragraph (1) of GO 44 and in these circumstances in view of the provisions of paragraph (3) there could be no termination of the appellant's service.

GO 44(1) does not make the calling of a report from the head of department mandatory and imperative but only directory and discretionary, unlike the requirements therein as to the contents of any such report called for which are obligatory, and even paragraph (2) of GO 44 regarding communication to the officer concerned of the complaints against him is discretionary and only where the 2nd respondent considers that the report requires further clarification. As the report under paragraph (1) is not mandatory, paragraph (3) of GO 44 must on a proper, reasonable, harmonious and purposive construction read to mean that consideration of the report only takes place when such a report has in fact been called for but not otherwise but the 2nd respondent has to be satisfied under that

paragraph that it is desirable in the public interest to terminate the service of the officer having regard to the conditions of the service, the usefulness of the officer thereto, the work and conduct of the officer and all the other circumstances of the case. The logical sequence to the argument for the appellant, demonstrating its fallacy, would be that if in fact representations have been made to the 2nd respondent in a report from a head of department in respect of an officer which makes it desirable for his retirement from the public service in the public interest, then before such termination can be effected under GO 44(3), it will still be necessary for the 2nd respondent to call for another report all over again under GO 44(1), as GO 44(3) refers, as we have pointed out, to a report called for under paragraph (1) of GO 44. It would only be consonant with common sense to conclude that in the event of any such precedent representations it will be open to the 2nd respondent to proceed under GO 44(3) without calling for any further report under paragraph (1) of that GO. In any event, however, there would appear to be a report from the Director General of Road Transport which is referred to in the letter of May 22, 1971 from the Secretary to the Public Services Commission to the appellant.

On the question of public interest, the matter was one for the 2nd respondent to determine and the acquisition of pecuniary resources or property beyond an officer's known income or means is certainly not in the public interest and must of necessity be a matter of grave public concern. On the evidence disclosed in these proceedings there was sufficient material for the 2nd respondent's decision on the question of public interest and it has not been established that it was made without justification or evinced any lack of good faith. In *Asher & Ors.* v. *Secretary of State for the Environment & Anor.*[6] in which alternative courses were open to the Minister, the English Court of Appeal held that it was for the Minister to decide which of several courses open to him was the best course to take, and, so long as he acted in good faith and not frivolously or vexatiously, his decision could not be questioned, and that even if, when directing an extraordinary audit, he had had in mind that a surcharge consequent on the audit would result in the disqualification of the councillors he had not thereby exercised his power for an improper purpose. There is an extremely heavy burden on the appellant to discharge in order to prove an allegation of bad faith (*Yeap Hock Seng*[2] (at page 284)) and the appellant has not accomplished this in the light of the evidence and the circumstances of this case.

There is no punitive element involved either in the termination of the appellant's service in the public interest. He has not been denied a pension and indeed the indication is that he will indeed be paid a pension once his pension factor is determined. We have already referred to the letter of October 13, 1971 intimating that the question of his eligibility to receive a pension would be dealt with by the 2nd respondent in accordance with the Pensions Ordinance, and there is a further letter to him dated May 5, 1972 from the Secretary General to the Ministry of Communications in forming him that his pension factor had not been approved as yet by the 1st respondent but that when the approval was received by the Ministry action would be taken for payment of the pension to him. The appellant also admitted under cross-examination that he has not been told that he could not draw a pension.

In all the circumstances we find that the termination of the appellant's service was properly effected under GO 44 in the public interest, that it was not a convoluted process to disguise a dismissal with a denial of the procedure provided for in GO 30 and that there was no abuse of power or *mala fides* in proceeding as the 2nd respondent did under GO 44 although the initial action purported to be under GO 8. There is accordingly also no question of any infraction of the appellant's rights to appeal to an Appeal Board under Article 144(5B)(ii) of the Constitution and the Public Services Disciplinary Board Regulations, 1967 as he was not dismissed but was required to retire from the public service on the termination of his employment in the public interest.

The other point taken before us is that the letter of October 13, 1971 from the 1st respondent to the appellant intimating termination of his service in the public interest refers to a decision by the Government, the 2nd respondent, and not the Yang di-Pertuan Agong (transposed in relation to the reference to the High Commissioner by the Federal Constitution (Modification of Laws) Order, 1957) who is the determining authority under the provisions of section 10 of the Pensions Ordinance as it stood at the material date before its amendment on January 1, 1976 which however, we would add, makes no difference to the position. The Yang di-Pertuan Agong is a constitutional monarch and is required under Article 40(1) of the Constitution in the exercise of his functions (except on certain matters that do not concern this appeal) to act in accordance with collective or individual ministerial advice and not on his own initiative (*Teh Cheng Poh alias Char Meh* v. *Public Prosecutor, Malaysia*[7] (at pages 466, 473)). In view of this the reference to the 2nd respondent in the letter in question is no more than a loose use of the term to encapsulate the decision of the Yang di-Pertuan Agong for the purposes of section 10 of the Pensions Ordinance and this view is reinforced by the proper presumption that can be made in this respect by the reference in the letter of October 13, 1971 to the termination having been effected under section 10(d) of the Pensions Ordinance which specifically refers to the power of the Yang di-Pertuan Agong to require an officer to retire from the public service on the termination of his employment in the public interest. Section 10 of the Pensions Ordinance must be read in the light of section 8 thereof, subsection (1) of which provides that no pension shall be granted under the Ordinance to any officer until he shall have retired from the public service and subsection (2) whereof is in like terms as section 10 of the Ordinance in prescribing that no pension shall be granted to any officer who has retired from the public service otherwise than as specified therein. Further support for the presumption of the Yang di-Pertuan Agong's exercise of his power on ministerial advice again appears in the letter of October 13, 1971 which goes on to state that the question of the appellant's eligibility for a pension would be dealt with under the Pensions Ordinance and also in the subsequent letter of May 5, 1972 indicating that when approval as to the appellant's pension factor was received action would

be taken for the pension to be paid to him.

It might perhaps be useful and appropriate to elaborate somewhat on the use of the term 'Government' around which the nub of the appellant's contention on this point revolves by referring to the decision of the House of Lords in *Town Investments Ltd. & Ors.* v. *Department of the Environment*[8] when, in discussing the relationship of the Queen acting in a political capacity and the administration, the House held *per curiam*: 'It is not private but public law that governs the relationships between Her Majesty the Queen acting in her political capacity, the government departments among which the work of Her Majesty's government is distributed, the ministers of the Crown in charge of the various departments and civil servants of all grades employed in those departments. To speak nowadays of "the Crown" as doing legislative or executive acts of government, which, in reality as distinct from legal fiction, are decided on and done by human beings other than the Queen herself, involves risk of confusion. It would be better, instead of speaking of "the Crown," to speak of "the government" — a term appropriate to embrace both collectively and individually all of the ministers of the Crown and parliamentary secretaries under whose direction the administrative work of government is carried on by the civil servants employed in the various government departments. Executive acts of government that are done by any of them, in the name of Her Majesty or under their official designation, are acts done by "the Crown" in the fictional sense in which that expression is now used in English public law.' We would particularly refer to the opinion of Lord Simon of Glaisdale (at page 397) when he said: "'Her Majesty' in constitutional legal usage thus generally personifies the powers of 'the Crown' — powers the nucleus of which legally and historically are those of The Queen, but which by constitutional convention (i.e., in political reality) are exercised in the name of The Queen by those who are nominally and legally her servants or agents."

When we speak of the Government, we refer to His Majesty's Government which includes His Majesty the Yang di-Pertuan Agong and of which he is the constitutional head. The reference therefore to the 2nd respondent in the letter of October 13, 1971 is sufficiently comprehensive to manifest the Yang di-Pertuan Agong's participation in the decision made and would appear to be no more than a composite term to intimate the exercise by the Yang di-Pertuan Agong of his powers under section 10 of the Pensions Ordinance on ministerial advice, and the communication by the 1st respondent of the decision so made by the 2nd respondent is only indicative, to use the words of Brightman J., in *In re Golden Chemical Products Ltd.*[9] (at page 307), applying the law as explained by Lord Greene M.R., in *Carltona, Ltd.* v. *Commissioners of Works & Ors.*[10] (at page 563), of 'a devolution of power — delegation is the wrong word'. In *Lim Lian Geok* v. *The Minister of the Interior, Federation of Malaya*[11] it was accepted before the Privy Council that a notice of intended deprivation of citizenship was not in any way invalid because it was signed by the Registrar-General of Citizens and the contention that there had been a delegation by the Minister was abandoned; these were points of argument taken unsuccessfully in the courts below.

We cannot but reject in the circumstances the argument advanced that the Yang di-Pertuan Agong did not in fact require the appellant to retire from the public service on the termination of his employment in the public interest under section 10(d) of the Pensions Ordinance.

In any event, even assuming for a moment for the sake of argument that the termination of the appellant's service involves any punitive element or can be impugned on the basis of the contentions advanced, but we find it does not and cannot, the position is covered by the further proviso inserted in Article 135(2) of the Constitution on December 31, 1978 and made effective retrospectively as from August 31, 1957 to the effect that the termination of the service of a public officer in the public interest does not constitute dismissal on the grounds relied on by the appellant. This proviso would accordingly, if the appellant had any just cause for complaint, deprive him of any relief or remedy.

In the premises and for the reasons we have given, we dismiss this appeal with costs. The deposit in court by way of security will go to the respondents to account of their taxed costs.

Appeal dismissed.

Solicitors: *Kean Chye & Sivalingam.*

PEMUNGUT HASIL TANAH, KOTA TINGGI v. UNITED MALAYAN BANKING CORPN. BHD.

[F.C. (Wan Suleiman, Salleh Abas FJJ. & Abdoolcader J.) August 11, 12 & 25 1981]

[Kuala Lumpur — Federal Court Civil Appeal Nos. 57 & 59 of 1979]

Land Law — Alienated land — Non payment of rent by proprietor — Forfeiture — Application to set aside forfeiture — Equitable relief — Compensation — National Land Code, ss. 97(1), 98(1), 100, 130(1), 133(1), 134 & 418(2).

Civil Law — Civil Law Act, 1956, ss. 3(1) & 6.

Sometime in December 1966, the State Authority of Johore alienated some 20.688 acres of land in Kota Tinggi, Johore, to Johore Sugar Plantation & Industries Bhd. (company) for a term of 99 years at a yearly rent. The company developed the land as a sugar-cane plantation and integrated sugar refinery. The company charged the land to the United Malayan Banking Corporation Bhd. (bank) to secure banking facilities totalling some $5 million with interest thereon.

The company defaulted in the payment of the rent to the State Authority for the year 1977. The Collector of Land Revenue (collector) gave notice in the prescribed form under section 97(1) of the National Land Code (Code) to the company to pay the rent within 3 months from the date of the notice. A copy of this notice was served on the bank as required by section 98(1) of the Code. As the company and the bank did not comply with this notice, the collector declared the land forfeited to the State Authority under section 100 of the Code. A notification of forfeiture was published in the *Government Gazette* on September 15, 1977.

The company applied to the State Authority on November 17, 1977 for annulment of the forfeiture. This was refused by the collector. Following this, both the company and the bank applied to avoid the forfeiture by way of appeals under section 418 of the Code on the ground that